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(Appearances for Additional Counsel on Next Page)

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

JENNIFER NOWICKI CLARK, on
behalf of herself and all other
similarly situated,

Plaintiff,

v.

HERBALIFE INTERNATIONAL,
INC., and HERBALIFE
INTERNATIONAL OF AMERICA,
INC.,

Defendants.

CASE NO. CV 12-08982 PSG (CW_x)

**STIPULATED PROTECTIVE
ORDER**

[FED. R. CIV. P. 26(c)]

DISCOVERY MATTER

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1 Pursuant to Fed. R. Civ. P. 26(c), Plaintiff, Jennifer Nowicki Clark and
2 Defendants, Herbalife International, Inc. and Herbalife International of America,
3 Inc., through undersigned counsel, jointly submit this Stipulated Protective Order
4 to govern the handling of information and materials produced in the course of
5 discovery or filed with the Court in this action.

6 **1. PURPOSES AND LIMITATIONS**

7 Disclosure and discovery activity in this action are likely to involve
8 production of confidential, proprietary, or private information for which special
9 protection from public disclosure and from use for any purpose other than
10 prosecuting this litigation would be warranted. Accordingly, the parties hereby
11 stipulate to and petition the Court to enter the following Stipulated Protective
12 Order. The parties acknowledge that this Order does not confer blanket
13 protections on all disclosures or responses to discovery and that the protection it
14 affords from public disclosure and use extends only to the limited information or
15 items that are entitled to confidential treatment under applicable legal principles.
16 The parties further acknowledge, as set forth in Section 12.4, below, that this
17 Stipulated Protective Order does not entitle them to file confidential information
18 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed
19 and the standards that will be applied when a party seeks permission from the
20 court to file materials under seal, and is hereby incorporated by reference.

21 **2. DEFINITIONS**

22 2.1. Challenging Party: a Party or Non-Party that challenges the
23 designation of information or items under this Order.

24 2.2. "Confidential" Information or Items: information (regardless of how
25 generated, stored or maintained) or tangible things that qualify for protection
26 under Federal Rules of Civil Procedure 26(c).

1 2.3. Designated House Counsel: House Counsel who seeks access to
2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in
3 this matter.

4 2.4. Designating Party: a Party or Non-Party that designates information
5 or items that it produces in disclosures or in responses to discovery as
6 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
7 ONLY” or “CONFIDENTIAL – OUTSIDE COUNSELS’ EYES ONLY.”

8 2.5. Disclosure or Discovery Material: all items or information, regardless
9 of the medium or manner generated, stored, or maintained (including, among
10 other things, testimony, transcripts, or tangible things) that are produced or
11 generated in disclosures or responses to discovery in this matter.

12 2.6. Expert: a person with specialized knowledge or experience in a
13 matter pertinent to the litigation who (1) has been retained by a Party or its
14 Outside

15 Counsel of Record to serve as an expert witness or as a consultant in this
16 action, (2) is not a past or a current employee of a Party or of a Party’s
17 competitor, and (3) at the time of retention, is not anticipated to become an
18 employee of a Party or of a Party’s competitor.

19 2.7. “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY”
20 Information or Items: extremely sensitive “Confidential Information or Items,”
21 disclosure of which to another Party or Non-Party would create a substantial risk
22 of serious harm that could not be avoided by less restrictive means.

23 2.8. “CONFIDENTIAL — OUTSIDE COUNSELS’ EYES ONLY”
24 Information or Items: extremely sensitive “HIGHLY CONFIDENTIAL —
25 ATTORNEYS’ EYES ONLY” Information or Items,” disclosure of which to
26 another Party or Non-Party or their House Counsel would create a substantial risk
27 of serious harm that could not be avoided by less restrictive means.
28

1 2.9. House Counsel: attorneys who are employees of a Party to this
2 action. House Counsel does not include Outside Counsel of Record or any other
3 outside counsel.

4 2.10. Non-Party: any natural person, partnership, corporation, association,
5 or other legal entity not named as a Party to this action.

6 2.11. Outside Counsel of Record: attorneys (as well as their support staff)
7 who are not employees of a Party to this action but are retained to represent or
8 advise a party to this action and have appeared in this action on behalf of that
9 party or are affiliated with a law firm which has appeared on behalf of that party.

10 2.12. Party: any party to this action, including all of its officers, directors,
11 employees, consultants, retained experts, and Outside Counsel of Record (and
12 their support staff).

13 2.13. Producing Party: a Party or Non-Party that produces Disclosure or
14 Discovery Material in this action.

15 2.14. Professional Vendors: persons or entities that provide litigation
16 support services (*e.g.*, photocopying; videotaping; translating; preparing exhibits
17 or demonstrations; and organizing, storing, or retrieving data in any form or
18 medium) and their employees and subcontractors.

19 2.15. Protected Material: any Disclosure or Discovery Material that is
20 designated as “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL –
21 ATTORNEYS’ EYES ONLY,” or “CONFIDENTIAL – OUTSIDE
22 COUNSELS’ EYES ONLY.”

23 2.16. Receiving Party: a Party that receives Disclosure or Discovery
24 Material from a Producing Party.

25 **3. SCOPE**

26 The protections conferred by this Stipulation and Order cover not only
27 Protected Material (as defined above), but also (1) any information copied or
28 extracted from Protected Material; (2) copies, excerpts, summaries, or

1 compilations of Protected Material; and (3) any testimony, conversations, or
2 presentations by Parties or counsel that might reveal Protected Material.

3 However, the protections conferred by this Stipulation and Order do not cover the
4 following information: (a) any information that is in the public domain at the time
5 of disclosure to a Receiving Party or becomes part of the public domain after its
6 disclosures to a Receiving Party as a result of publication not involving a
7 violation of this Order, including becoming part of the public record through trial
8 or otherwise; and (b) any information known to the Receiving Party prior to the
9 disclosure or obtained by the Receiving Party after the disclosure from a source
10 who obtained the information lawfully and under no obligation of confidentiality
11 to the Designating Party. Any use of Protected Material at trial shall be governed
12 by a separate agreement or order.

13 **4. DURATION**

14 Even after final disposition of this litigation, the confidentiality obligations
15 imposed by this Stipulation and Order shall remain in effect until a Designating
16 Party agrees otherwise in writing or a court order otherwise directs. Final
17 disposition shall be deemed to be the later of (1) dismissal of all claims and
18 defenses in this action with or without prejudice; and (2) final judgment herein
19 after the completion and exhaustion of all appeals, re-hearings, remands, trials, or
20 reviews of this action, including the time limits for filing any motions or
21 applications for extension of time pursuant to applicable law.

22 **5. DESIGNATING PROTECTED MATERIAL**

23 5.1. Exercise of Restraint and Reasonable Care in Designating Material
24 for Protection. Each Party or Non-Party that designates information or items for
25 protection under this Order must take care to limit any such designation to
26 specific material that qualifies under the appropriate standards. To the extent it is
27 practical to do so, the Designating Party must designate for protection only those
28

1 parts of material, documents, items, or oral or written communications that
2 qualify – so that other portions of the material, documents, items, or
3 communications for which protection is not warranted are not swept unjustifiably
4 within the ambit of this Order.

5 Mass, indiscriminate, or routinized designations are prohibited.
6 Designations that are shown to be clearly unjustified, or that have been made for
7 an improper purpose (*e.g.*, to unnecessarily encumber or retard the case
8 development process, or to impose unnecessary expenses and burdens on other
9 parties) are prohibited. If it comes to a Designating Party's attention that
10 information or items that it designated for protection do not qualify for protection
11 at all or do not qualify for the level of protection initially asserted, that
12 Designating Party must promptly notify all other parties that it is withdrawing the
13 mistaken designation.

14 5.2. Manner and Timing of Designations. Except as otherwise
15 provided in this Order (*see, e.g.*, second paragraph of section 5.2(a),
16 below), or as otherwise stipulated or ordered, Disclosure or Discovery Material
17 that qualifies for protection under this Order must be clearly so designated before
18 the material is disclosed or produced.

19
20 Designation in conformity with this Order requires:

21 (a) for information in documentary form (*e.g.*, paper or
22 electronic documents, but excluding transcripts of depositions or other pretrial or
23 trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL"
24 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or
25 "CONFIDENTIAL – OUTSIDE COUNSELS' EYES ONLY" to each page that
26 contains protected material.

27 A Party or Non-Party that makes original documents or materials
28 available for inspection need not designate them for protection until after the

1 inspecting Party has indicated which material it would like copied and produced.
2 During the inspection and before the designation, all of the material made
3 available for inspection shall be deemed “CONFIDENTIAL – OUTSIDE
4 COUNSELS’ EYES ONLY.” After the inspecting Party has identified the
5 documents it wants copied and produced, the Producing Party must determine
6 which documents, or portions thereof, qualify for protection under this Order.
7 Then, before producing the specified documents, the Producing Party must affix
8 the appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
9 ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL – OUTSIDE COUNSELS’
10 EYES ONLY”) to each page that contains Protected Material. If only a portion or
11 portions of the material on a page qualifies for protection, the Producing Party
12 also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
13 markings in the margins) and must specify, for each portion, the level of
14 protection being asserted.

15 (b) for testimony given in deposition or in other non-
16 dispositive pretrial proceedings, that the Designating Party identify on the record,
17 before the close of the deposition, hearing, or other proceeding, all protected
18 testimony, and specify the level of protection being asserted. When it is
19 impractical to identify separately each portion of testimony that is entitled to
20 protection, and it appears that substantial portions of the testimony may qualify
21 for protection, the Designating Party may invoke on the record (before the
22 deposition, hearing, or other proceeding is concluded) a right to have up to 21
23 days after its receipt of the transcript to identify the specific portions of the
24 testimony as to which protection is sought and to specify the level of protection
25 being asserted. Only those portions of the testimony that are appropriately
26 designated for protection within the 21-day period shall be covered by the
27 provisions of this Stipulated Protective Order. Alternatively, for depositions, a
28 Designating Party may specify, at the deposition or up to 21 days after its receipt

1 of the transcript if that period is properly invoked, that the entire transcript shall
2 be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
3 ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL – OUTSIDE COUNSELS’
4 EYES ONLY.”

5 Parties shall give the other parties notice if they reasonably expect a
6 deposition, hearing or other proceeding to include Protected Material so that the
7 other parties can ensure that only authorized individuals who have signed the
8 “Acknowledgement and Agreement to Be Bound” (Exhibit A) are present at those
9 proceedings. The use of a document as an exhibit at a deposition shall not in any
10 way affect its designation as “CONFIDENTIAL” or “HIGHLY
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL –
12 OUTSIDE COUNSELS’ EYES ONLY.”

13 Transcripts containing Protected Material shall have an obvious legend on
14 the title page that the transcript contains Protected Material, and the title page
15 shall be followed by a list of all pages (including line numbers as appropriate)
16 that have been designated as Protected Material and the level of protection being
17 asserted by the Designated Party. The Designating Party shall inform the court
18 reporter of these requirements. Any transcript before the expiration of a 21-day
19 period for designation shall be treated during that period as if it had been
20 designated “CONFIDENTIAL – OUTSIDE COUNSELS’ EYES ONLY” in its
21 entirety unless otherwise agreed. After the expiration of that period, the transcript
22 shall be treated only as actually designated.

23 (c) for information produced in some form other than
24 documentary, and for any other tangible items, that the Producing Party affix in a
25 prominent place on the exterior of the container or containers in which the
26 information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL
28 OUTSIDE COUNSELS’ EYES ONLY.” If only a portion or portions of the

1 information or item warrant protection, the Producing Party, to the extent
2 practicable, shall identify the protected portion(s) and specify the level of
3 protection being asserted.

4 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent
5 failure to designate qualified information or items does not, standing alone, waive
6 the Designating Party's right to secure protection under this Order for such
7 material. Upon timely correction of a designation, the Receiving Party must make
8 reasonable efforts to assure that the material is treated in accordance with the
9 provisions of this Order.

10 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

11 6.1. Timing of Challenges. Any Party or Non-Party may challenge a
12 designation of confidentiality at any time. Unless a prompt challenge to a
13 Designating Party's confidentiality designation is necessary to avoid foreseeable
14 substantial unfairness, unnecessary economic burdens, or a significant disruption
15 or delay of the litigation, a Party does not waive its right to challenge a
16 confidentiality designation by electing not to mount a challenge promptly after
17 the original designation is disclosed.

18 6.2. Meet and Confer. A Challenging Party shall initiate the dispute
19 resolution process by providing written notice of each designation it is
20 challenging and describing the bases for each challenge. To avoid ambiguity as to
21 whether a challenge has been made, the written notice must recite that the
22 challenge to confidentiality is being made in accordance with this specific
23 paragraph of the Protective Order. The parties shall attempt to resolve each
24 challenge in good faith and must begin the process by conferring directly (in
25 voice to voice dialogue; other forms of communication are not sufficient) within
26 14 days of the date of service of notice. In conferring, the challenging Party must
27 explain the basis for its belief that the confidentiality designation was not proper
28 and must give the Designating Party an opportunity to review the designated

1 material, to reconsider the circumstances, and, if no change in designation is
2 offered, to explain the basis for the chosen designation. A Challenging Party may
3 proceed to the next stage of the challenge process only if it has engaged in this
4 meet and confer process first or establishes that the Designating Party is unwilling
5 to participate in the meet and confer process in a timely manner.

6 6.3. Judicial Intervention. In any judicial proceeding challenging a
7 confidentiality designation, the burden of persuasion with respect to the propriety
8 of the confidentiality designation shall remain upon the Designating Party. If the
9 parties are not able to resolve a dispute about a confidentiality designation within
10 the time provided by paragraph 6.2 above, the parties shall, within fourteen (14)
11 calendar days thereafter, prepare and present to the Court a joint letter brief that
12 identifies the challenged material and sets forth the respective positions of the
13 parties about the propriety of the challenged confidentiality designations. Until
14 the ruling on the dispute becomes final, all parties shall continue to afford the
15 material in question the level of protection to which it is entitled under the
16 Designating Party's designation.

17 In the event that the final ruling is that the challenged material is not
18 confidential or that its designation should be changed, the Designating Party shall
19 reproduce copies of all materials with their designations removed or changed in
20 accordance with the ruling within thirty (30) calendar days at the expense of the
21 Designating Party.

22 7. ACCESS TO AND USE OF PROTECTED MATERIAL

23 7.1. Basic Principles. A Receiving Party may use Protected Material that
24 is disclosed or produced by another Party, or by a Non-Party who agrees to be
25 bound by this Order, in connection with this case only for prosecuting, defending,
26 or attempting to settle this litigation. Such Protected Material may be disclosed
27 only to the categories of persons and under the conditions described in this Order.
28

1 When the litigation has been terminated, a Receiving Party must comply with the
2 provisions of section 13, below (FINAL DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party at a
4 location and in a secure manner¹ that ensures that access is limited to the persons
5 authorized under this Order.

6 7.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless
7 otherwise ordered by the Court or permitted in writing by the Designating Party, a
8 Receiving Party may disclose any information or item designated
9 “CONFIDENTIAL” only to:

10 (a) the Receiving Party’s Outside Counsel of record in this action, as
11 well as employees of said Outside Counsel to whom it is reasonably necessary to
12 disclose the information for this litigation;

13 (b) the officers, directors, and employees (including House Counsel)
14 of the Receiving Party to whom disclosure is reasonably necessary for this
15 litigation and who have signed the “Acknowledgment and Agreement to Be
16 Bound” (Exhibit A);

17 (c) Experts (as defined in this Order) of the Receiving Party to whom
18 disclosure is reasonably necessary for this litigation and who have signed the
19 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (d) the court and its personnel;

21 (e) court reporters and their staff, and professional jury or trial
22 consultants, and Professional Vendors to whom disclosure is reasonably
23 necessary for this litigation and who have signed the “Acknowledgment and
24 Agreement to Be Bound” (Exhibit A);

25
26 _____
27 ¹ It may be appropriate under certain circumstances to require the Receiving party to store any
28 electronic Protected Material in password-protected form.

1 (f) during their depositions, witnesses in the action to whom
2 disclosure is reasonably necessary and who have signed the “Acknowledgment
3 and Agreement to Be Bound” (Exhibit A), or have agreed on the record to keep
4 the information confidential and not to use it for any purpose, or otherwise agreed
5 by the Designating Party or ordered by the court. Pages of transcribed deposition
6 testimony or exhibits to depositions that reveal Protected Material shall be
7 separately bound by the court reporter and may not be disclosed to anyone except
8 as permitted under this Stipulated Protective Order;

9 (g) the author and named recipient of a document containing the
10 information or a custodian or other person who otherwise possessed or knew the
11 information; and

12 (h) notwithstanding (f), at depositions in this case, to the person or
13 an agent or former agent of the entity that produced or originally created the
14 CONFIDENTIAL information or item.

15 7.3. Disclosure of “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES
16 ONLY.” Unless otherwise ordered by the court or permitted in writing by the
17 Designating Party, a Receiving Party may disclose any information or item
18 designated “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY” only
19 to:

20 (a) the Receiving Party’s Outside Counsel of record in this action, as
21 well as employees of said Outside Counsel to whom it is reasonably necessary to
22 disclose the information for this litigation;

23 (b) Designated House Counsel of the Receiving Party (1) to whom
24 disclosure is reasonably necessary for this litigation, (2) who has signed the
25 “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom
26 the procedures set forth in paragraph 7.4(a)(1), below have been followed;
27
28

(c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation and (2) who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(d) the court and its personnel;

(e) court reporters, their staff, and professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) the author and named recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and

(g) at depositions in this case, to the author or recipient of the document as indicated on the face of the document, or any other natural person or agent or former agent of an entity whose conduct or communications are substantially described in the document, or to the person or agent or former agent of the entity that produced or originally created the HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY information or item.

7.4 Disclosure of “CONFIDENTIAL – OUTSIDE COUNSELS’ EYES ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL – OUTSIDE COUNSELS’ EYES ONLY” only to:

(a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation;

(b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation and (2) who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

1 (c) the court and its personnel;

2 (d) court reporters, their staff, and professional jury or trial
3 consultants, and Professional Vendors to whom disclosure is reasonably
4 necessary for this litigation and who have signed the “Acknowledgment and
5 Agreement to Be Bound” (Exhibit A); and

6 (e) at depositions in this case, to the author or recipient of the
7 document as indicated on the face of the document, or any other natural person or
8 agent or former agent of an entity whose conduct or communications are
9 substantially described in the document, or to the person or agent or former agent
10 of the entity that produced or originally created the HIGHLY CONFIDENTIAL –
11 ATTORNEYS’ EYES ONLY information or item.

12 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
13 **PRODUCED IN OTHER LITIGATION**

14 If a Receiving Party is served with a subpoena or an order issued in other
15 litigation that compels disclosure of any information or items designated in this
16 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL —
17 ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL – OUTSIDE COUNSELS’
18 EYES ONLY” that party must:

19 (a) promptly notify in writing the Designating Party. Such
20 notification shall include a copy of the subpoena or court order;

21 (b) promptly notify in writing party who caused the subpoena or
22 order to issue in the other litigation that some or all the material covered by the
23 subpoena or order is the subject to this Protective Order. Such notification shall
24 include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.²

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL – OUTSIDE COUNSELS’ EYES ONLY” or “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY AND SUBJECT TO PROSECUTION BAR” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) Upon agreement by the Non-Party, the terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL – OUTSIDE COUNSELS’ EYES ONLY” or “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY AND SUBJECT TO PROSECUTION BAR.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

² The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued.

1 (b) In the event that a Party is required, by a valid discovery request,
2 to produce a Non-Party's confidential information in its possession, and the Party
3 is subject to an agreement with the Non-Party not to produce the Non-Party's
4 confidential information, then the Party shall:

5 1. promptly notify in writing the Receiving Party and the Non-
6 Party that some or all of the information requested is subject to a confidentiality
7 agreement with a Non-Party;

8 2. promptly provide the Non-Party with a copy of the
9 Stipulated Protective Order in this litigation, the relevant discovery request(s), and
10 a reasonably specific description of the information requested;

11 3. promptly provide the Receiving Party with a copy of the
12 confidentiality agreement with the Non-Party prohibiting the Producing Party
13 from producing the Non-Party's confidential information; and

14 4. make the information requested available for inspection by
15 the Non-Party.

16 (c) If the Non-Party fails to object or seek a protective order from this court
17 within seven (7) days of receiving the notice and accompanying information, the
18 Receiving Party must produce the Non-Party's confidential information
19 responsive to the discovery request. If the Non-Party timely seeks a protective
20 order, the Receiving Party shall not produce any information in its possession or
21 control that is subject to the confidentiality agreement with the Non-Party before
22 a determination by the court.³

23 Absent a court order to the contrary, the Non-Party shall bear the burden
24 and expense of seeking protection in this court of its Protected Material.
25

26 ³ The purpose of this provision is to alert the interested parties to the existence of confidentiality
27 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality
28 interests in this court.

1 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED**
 2 **MATERIAL**

3 If a Receiving Party learns that, by inadvertence or otherwise, it has
 4 disclosed Protected Material to any person or in any circumstance not authorized
 5 under this Stipulated Protective order, the Receiving Party must immediately (a)
 6 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
 7 best efforts to retrieve all unauthorized copies of the Protected Material, (c)
 8 inform the person or persons to whom unauthorized disclosures were made of all
 9 the terms of this Order, and (d) request such person or persons to execute the
 10 “Acknowledgment and Agreement to Be Bound” that is attached hereto as
 11 Exhibit A.

12 **11. INADVERTENT PRODUCTION OF PRIVILEGED**
 13 **OR OTHERWISE PROTECTED MATERIAL**

14 When a Producing Party gives notice to Receiving Parties that certain
 15 inadvertently produced material is subject to a claim of privilege or other
 16 protection, the obligations of the Receiving Parties are those set forth in Federal
 17 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
 18 whatever procedure may be established in an e-discovery order that provides the
 19 production without prior privilege review. Pursuant to Federal Rule of Evidence
 20 502(d) and (e), insofar as the parties reach an agreement on the effect of
 21 disclosure of a communication or information covered by the attorney-client
 22 privilege or work product protection, the parties may incorporate their agreement
 23 in the stipulated protective order admitted to the court.

24 **12. MISCELLANEOUS**

25 12.1. Right to Further Relief. Nothing in this Order abridges the right of
 26 any person to seek its modification by the court in the future.

27 12.2. Right to Assert Other Objections. By stipulating to the entry of this
 28 Protective Order no Party waives any right it otherwise would have to object to

1 disclosing or producing any information or item on any ground not addressed in
2 this Stipulated Protective Order. Similarly, no Party waives any right to object on
3 any ground to use in evidence of any of the material covered by this Protective
4 Order.

5 12.3. Export Control. Disclosure of Protected Material shall be subject to
6 all applicable laws and regulations relating to the export of technical data
7 contained in such Protective Material, including the release of such technical data
8 to foreign persons or nationals in the United States or elsewhere. The Producing
9 Party shall be responsible for identifying any such controlled technical data, and
10 the Receiving Party shall take measures necessary to ensure compliance.

11 12.4. Filing Protected Material. Without written permission from the
12 Designating Party or a court order secured after appropriate notice to all
13 interested persons, a Party may not file in the public record in this action any
14 Protected Material. A Party that seeks to file under seal any Protected Material
15 must comply with Civil Local Rule 79-5. Protected Material may only be filed
16 under seal pursuant to a court order authorizing the sealing of the specific
17 Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will
18 issue only upon a request establishing that the Protected Material at issue is
19 privileged, protectable as a trade secret, or otherwise entitled to protection under
20 the law. If a Receiving Party's request to file Protected Material under seal
21 pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving
22 party may file the Protected Material in the public record pursuant to Civil Local
23 Rule 79-5(e) unless otherwise instructed by the court.
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1 **13. FINAL DISPOSITION**

2 Within sixty (60) days after the final disposition of this action, as defined in
3 paragraph 4, each Receiving Party shall return all Protected Material to the
4 Producing Party or destroy it. As used in this subdivision, “all Protected Material”
5 includes all copies, abstracts, compilations, summaries and any other format
6 reproducing or capturing any of the Protected Material. Whether the Protected
7 Material is returned or destroyed, the Receiving Party must submit a written
8 certification to the Producing Party (and, if not the same person or entity, to the
9 Designation Party) by the 60-day deadline that (1) identifies (by category, where
10 appropriate) all the Protected Material that was returned or destroyed and (2)
11 affirms that the Receiving Party has not retained any copies, abstracts,
12 compilations, summaries, or other format of reproducing or capturing any of the
13 Protected Material. Notwithstanding this provision, Outside Counsel of Record
14 are entitled to retain an archival copy of all pleadings, motion papers, trial,
15 deposition and hearing transcripts, legal memoranda, correspondence, deposition
16 and trial exhibits, expert reports, attorney work product, and consultant and expert
17 work product, even if such materials contain Protected Material. Any such
18 archival copies that contain or constitute Protected Material remain subject to this
19 Protective Order as set forth in Section 4 (DURATION).

20
21 DATED: June 21, 2013

Respectfully submitted,

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Hon. Carla Woehrle
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on _____ [date] in the case of *Clark v. Herbalife International, Inc. and Herbalife International of America, Inc.*, Case No. CV 12-08982 PSG (CWx).

I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____